FILE COPY

Office - Supreme Court, U. S.
FILED
JAN 14 1947
CHARLES ELMORE CROPLEY
CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1946

## No. 95

AIRCRAFT & DIESEL EQUIPMENT CORPORATION,
*Appellant,*

*vs.*

MAURICE HIRSCH, E. D. McDOUGAL, JOHN R. PAUL, *et al.*,
*Appellees.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA.

## REPLY BRIEF FOR AIRCRAFT & DIESEL EQUIPMENT CORPORATION, APPELLANT.

## ERRATA

EARL B. WILKINSON,
ARTHUR R. HALL,
FRANCIS W. HILL, JR.,
*Counsel for Aircraft & Diesel Equipment Corporation.*

SAMUEL W. WITWER, JR.,
J. ALFRED MORAN,
JOSEPH KEIG,
DAVID R. GALLAGHER,
*Of Counsel.*

BARNARD & MILLER, 33 S. Market St., Chicago. FRAnklin 0563

IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1946

## No. 95

AIRCRAFT & DIESEL EQUIPMENT CORPORATION,
*Appellant,*

*vs.*

MAURICE HIRSCH, E. D. McDOUGAL, JOHN R. PAUL, *et al.*,
*Appellees.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA.

## REPLY BRIEF FOR AIRCRAFT & DIESEL EQUIPMENT CORPORATION, APPELLANT.

## ERRATA

Cover. Add the name David R. Gallagher to names "Of Counsel".

Exscind pages i and ii and substitute the following therefor:

## TABLE OF CONTENTS.


ARGUMENT — PAGE

Appellees contentions ..... 2

The Statute ..... 3, 4

Pertinent Facts ..... 5

ANALYSIS OF PRINCIPAL CASES

(a) Macauley v. Waterman S. S. Co. 327 U. S. 540, analyzed ..... 6-8

(b) Coffman v. Breeze, 323 U. S. 316, analyzed .... 8-11

(c) United States v. Ruzicka, 67 S. Ct. 207, analyzed ..... 11-15

EXHAUSTION OF ADMINISTRATIVE REMEDIES DOCTRINE DOES NOT APPLY ..... 15-24

(a) Doctrine of Kuykendall case ..... 17

(b) Doctrine of Myers case ..... 17

(c) Doctrine of Phillip v. Commissioner ..... 17, 18

(d) Refunds discussed: None in Renegotiation Act. 18, 19

(e) Board must certify refunds ..... 19

(f) Inadequacy of interest ..... 19

"Absence of judicial review," "multiplicity of suits," payment prior to completion of administrative process, . . . reference to discussion of Coffman, Macauley and Ruzicka cases ..... 19-20

Act unconstitutional in toto ..... 20-24

(a) Standards discussed ..... 20-22

(b) Retroactivity discussed ..... 22-23

(c) Separability clause discussed ..... 23

PAGE

Inadequacy of Remedy at Law.....24-28

(a) Suits against customers present difficult problems where petition is pending in The Tax Court, uncertainty of "remedy".....24-26

(b) Appellant need not sue customers because of others' wrongdoing.....27, 28

This is not a suit against the United States.....28-33

(a) Appellees' cases discussed.

Mines Safety Co. v. Forrestal, 326 U. S. 371... 28

Minnesota v. Hitchcock, 185 U. S. 373..... 29

Louisiana v. McAdoo, 234 U. S. 627..... 29

Belknap v. Schild, 161 U. S. 10.....29, 30

(b) Appellees sued as individuals cannot justify, if act be unconstitutional.....30-33

Doctrine of adoption of War Department's factors discussed .....33-34

Notion that because United States may sue there is an adequate remedy necessarily available to appellant .....34-35

Conclusion .....35-36

Page iii

Line 12. Substitute *Ambler* for "Amkler".

Page iv

Line 10. Substitute as citation Small Co. v. Am. Sugar Ref. Co., *267 U. S. 233* for "167 U. S. 33".

Line 11. Exscind as page reference "24" and substitute therefor *26, 27*.

Page iv

Line 19 et seq. Exscind beginning with "Statutes Cited" and substitute the following:

REFERENCES TO CONSTITUTIONAL PROVISIONS.

The Fifth Amendment..... 3
The Eleventh Amendment..... 33

STATUTES CITED.

Agricultural Marketing Act of 1937.....12, 13
Renegotiation Act .....
.....1, 2, 3, 4, 8, 9, 13, 19, 20, 27, 28, 33, 34, 35
Royalty Adjustment Act..... 9
Third Deficiency Appropriation Act.....19, 25

MISCELLANEOUS.

89 Congressional Record 9930..... 18

Page 2

Line 3. Substitute (*brief, p. 16*) for "(p. 16)".

Line 6. Substitute *authoritatively* for "authoratatively".

Line 11. Substitute *effect* for "affect".

Line 23. Substitute (*Rec. 166-167* for "Rec. 167)".

Page 3

Line 5 from bottom. Substitute *Section 403 (c) (1).* (*Appellees' App. p. 27*) for "(Section 403 (c) (1), Appellees' App. p. 27)".

Page 4

Line 2 from bottom. Substitute *administrative* for "Administrative".

Page 5

Line 6. Substitute *were* for "was".

Page 6

Line 11. Substitute *It* for "He".

Line 12. Substitute *its* for "his".

Page 10

Line 7 from bottom. Substitute *whom* for "who".

Line 4 from bottom. Exscind colon.

Page 11

Line 19. Add (*p. 211*):

Page 12

Line 10. Substitute *Federal Communications Com'n* for "Comm'n".

Line 3 from bottom. Exscind "either".

Page 15

Line 4. Substitute *demonstrates* for "demonstrate".

Line 7. Substitute *21* for "20".

Page 16

Line 2 from bottom. Substitute *could* for "can".

Page 17

Line 6. Substitute *290* for "200".

Line 8. Exscind comma after "case".

Page 20

Line 14. Add (*brief p. 32 n.*)

Line 21. Add (*p. 528*).

Line 22. Substitute *these grants* for "those grants".

Line 3 from bottom. Substitute *267* for "167".

Page 22

Line 7. Substitute *poisonous* for "poisonuous" and *impure* for "impre".

Line 15. Add comma after "*Macy*".

Line 18. Substitute *pp. 34-35* for "p. 34".

Page 23

Line 9. Add after word "said" (*pp. 316, 317*).

Page 29

Line 5 from bottom. Exscind "would".

Page 32

Line 10 from bottom. Exscind comma.

Page 35

Line 10. Substitute "*The* Tax Court" for "the Tax Court".

Line 14. Substitute "*The* Tax Court" for "the Tax Court".

---

Respectfully submitted,

EARL B. WILKINSON,
ARTHUR R. HALL,
FRANCIS W. HILL, JR.,
*Attorneys for Appellees.*

SAMUEL W. WITWER,
J. ALFRED MORAN,
JOSEPH KEIG,
DAVID R. GALLAGHER,
*Of Counsel.*